

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-13

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:

Taxpayer.

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14-T-017
cigarette tax

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued on February 18, 2014 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. The Taxpayer holds a sales permit and cigarette dealer’s permit (“License”).¹ The hearing was held on April 30, 2014. The Taxpayer did not appear but as the Taxpayer had adequate notice of hearing, the hearing went forward.² The Division rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures, Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

¹ See Division’s Exhibits A, B, and C (Taxpayer’s business application and registration; copy of current sales permit and cigarette dealer’s License).

² Notice is valid upon mailing. The Taxpayer did receive a copy of the Notice. See Division’s Exhibit I (printout of online tracking by United States Post Officer of certified mail delivery).

III. ISSUE

Whether the Taxpayer violated R.I. Gen. Laws § 44-20-1 *et seq.* and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Special Investigations Supervisor, testified on behalf of the Division. He testified that he supervises the tobacco inspectors. He testified that if an investigator finds contraband tobacco at a store, the investigator will complete a seizure report listing the tobacco items seized and have the store employee or owner sign the report and the contraband is then brought back to the Division, counted by a supervisor, and locked in the evidence locker. He testified the seizure report is in triplicate and a copy is left with the person at the store, a copy is kept with the tobacco in the evidence locker, and a copy is placed in the file.

Tax Investigator, testified on behalf of the Division. He testified that he inspected the Taxpayer's premises on December 5, 2012 along with _____, a Division investigator. He testified that they found hidden underneath the counter, cigarette packets with tax stamps that had numbers that were not valid tax stamp numbers in Rhode Island. He testified that he also performed a "taggant test" on the stamps and the test showed that the stamps did not contain the substance taggant that is contained in Rhode Island stamps so that the stamps were not valid Rhode Island tax stamps. He testified that the clerk on duty signed the seizure report. See Division's Exhibit D (seizure report dated December 5, 2012).

_____, Tax Investigator, testified on behalf of the Division. He testified that he completed said seizure report which was signed by the clerk on duty. He testified that at the time of inspection, little cigars had just started to be taxed and the Division was issuing warnings so while little cigars were discovered, they were not included in the Division's bill.

Principal Revenue Agent, testified on behalf of the Division. He testified that the Division calculates its bills on the basis of seizure reports and assesses penalties as provided for by statute. See Division's E (cigarette seizure worksheet). He testified that the Notice of Deficiency was issued to the Taxpayer for the tax and penalty owed and a Notice of License suspension was also issued. See Division's Exhibits F and G (Notice of Deficiency and Notice of License suspension).

V. DISCUSSION

A. **Relevant Statutes**

R.I. Gen. Laws § 44-20-12³ imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13 provides that a tax at the same rate as R.I. Gen. Laws § 44-20-12 is imposed on unstamped cigarettes as follows:

Tax imposed on unstamped cigarettes. – A tax is imposed at the rate of one hundred seventy-five (175) mills for each cigarette upon the storage or use within this state of any cigarettes not stamped in accordance with the provisions of this chapter in the possession of any consumer within this state.

R.I. Gen. Laws § 44-20-33 provides as follows:

Sale of unstamped cigarettes prohibited. – No distributor shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell any cigarettes, the packages or boxes containing which do not bear stamps evidencing the payment of the tax imposed by this chapter.

R.I. Gen. Laws § 44-20-37 provides as follows:

Seizure and destruction of unstamped cigarettes. – Any cigarettes found at any place in this state without stamps affixed as required by this chapter are declared to be contraband goods and may be seized by the tax administrator, his or her agents, or employees, or by any deputy sheriff, or police officer when directed by the tax

³ R.I. Gen. Laws § 44-20-12 states as follows:

Tax imposed on cigarettes sold. – A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of one hundred seventy-five (175) mills for each cigarette.

administrator to do so, without a warrant. Any cigarettes seized under the provisions of this chapter shall be destroyed. The seizure and/or destruction of any cigarettes under the provisions of this section does not relieve any person from a fine or other penalty for violation of this chapter.

R.I. Gen. Laws § 44-20-40.1 provides in part as follows:

Inspections. – (a) The administrator or his or her duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer, distributor or dealer.

R.I. Gen. Laws § 44-20-51.1 provides as follows:

Civil penalties. – (a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be liable to a penalty of one thousand dollars (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this chapter, be liable to a penalty of five (5) times the tax due but unpaid.

R.I. Gen. Laws §44-20-8 provides in part as follows:

Suspension or revocation of license. – The tax administrator may suspend or revoke any license under this chapter for failure of the licensee to comply with any provision of this chapter or with any provision of any other law or ordinance relative to the sale of cigarettes; and the tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 13 of title 6.

C. Whether the Taxpayer Owes the Tax Assessment and Assessed Penalties and Should License be Suspended

There was no dispute that the Division seized cigarettes from the Taxpayer for which no tax had been paid. Pursuant to R.I. Gen. Laws § 44-20-13, the Division properly assessed the tax owed on the seized cigarettes. Pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b), the Division properly assessed penalty “A” (five (5) times the retail value or minimum of \$1,000) and penalty “B” (five (5) times the cigarette tax due but unpaid).

The Tax Administrator may suspend or revoke any license for failure to comply with any provision of this chapter. Thus, any violation of any provision of R.I. Gen. Laws § 44-20-1 *et seq.* may be a basis for revocation or suspension. The evidence was that the Taxpayer had counterfeit Rhode Island tax stamps since the stamp numbers were not valid in Rhode Island and the purported Rhode Island stamps did not contain taggent which would be found in real Rhode Island tax stamps. In light of the counterfeit tax stamps, a suspension is appropriate.

VI. FINDINGS OF FACT

1. On or about February 18, 2014, a Notice was issued to the Taxpayer in response to the Taxpayer's request for hearing.
2. A hearing was held on April 30, 2014 at which time the Respondent did not appear. As the Respondent was notified of the hearing, the hearing went forward. The Division rested on the record.
3. The Taxpayer had in its store the seized unstamped cigarettes. The seized cigarettes had counterfeit Rhode Island tax stamps.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:


1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated R.I. Gen. Laws § 44-20-33 by having unstamped (counterfeit stamps) cigarettes on its premises.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-51.1(a) and (b), the Division properly assessed the Taxpayer for tax owed and penalties on the assessment as set forth in the Notice of Deficiency. See Division's Exhibit F. Pursuant to R.I. Gen. Laws § 44-20-8, the Taxpayer's License shall be suspended for 30 days to be effective 31 days after the signing of this decision.

Date: May 27, 2014

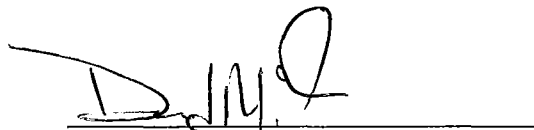

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: June 18, 2014


David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-20-48 Appeal to district court.

Any person aggrieved by any decision of the tax administrator under the provisions of this chapter may appeal the decision within thirty (30) days thereafter to the sixth (6th) division of the district court. The appellant shall at the time of taking an appeal file with the court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. These appeals are preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. The court may grant relief as may be equitable. If the court determines that the appeal was taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all those appeals, which may be denied, costs may be taxed against the appellant at the discretion of the court. In no case shall costs be taxed against the state, its officers, or agents. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

CERTIFICATION

I hereby certify that on the 18th day June, 2014 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the Taxpayer's address on record with the Division and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

